

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45760 of 2023

Applicant :- Anil And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Puneet Kumar

Counsel for Opposite Party :- G.A.,Rajiv Dwivedi

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant, learned A.G.A for the State, Sri Rajiv Dwivedi, learned counsel for the informant and perused the record.
2. The prosecution story in brief is that on 07.05.2023 at about 01:00 P.M. her husband was sitting in front of the door of his house at that time, due to old enmity, the the villagers namely, Anil, Ranjeet, Sanjay (applicants) Dhananjay, Kalloo armed with lathi danda and country made pistol came to her house and had caught her Jeth (Prem)P, the applicants had exhorted to kill him, in the meantime, the co-accused Kalloo had fired upon him and when her husband and Devar namely, Ram Bahadur and Vimla Devi rushed to save him, the accused persons abused them and had beaten with lathi and danda.
3. Learned counsel for the applicants submits that the applicants have been assigned the role of exhortation and that nothing has been recovered either from the possession of the applicants or on the pointing of the applicant. The role of firing has been assigned from the accused Kalloo whereas the applicant has been assigned the role of exhortation and causing injury with lathi and danda. He further submits that in the post mortem report, one fire arm injury and contused swelling has been shown whereas, the injury report of injured Ram Bahadur, Chandra Kishore and Smt. Majrooba shows that there are contusions and swelling and all injuries are simple in nature. It is thus contended that except the role of exhortation, there is nothing on record to demonstrate that the applicants have committed the offence. He further submits that the

applicants have been falsely implicated due to village parti bandi. Several other submissions in order to demonstrate the falsity of the allegations made against the applicants have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicants that they are ready to cooperate with the process of law and shall faithfully make themselves available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicants are languishing in jail since 07.05.2023 having no criminal history.

3. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicants by contending that the innocence of the applicants cannot be adjudged at pre trial stage, therefore, they does not deserve any indulgence.

4. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicants has made out a case for bail. Hence the bail application is allowed.

5. Let applicants **Anil, Randhir and Sanjay** involved in Case Crime No.139 of 2023 under Sections 147, 148, 149, 302, 323, 325, 504, 506 I.P.C., Police Station Hussainganj, District Fatehpur, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

II. The applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal

Code.

III. In case, the applicants misuses the liberty of bail and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

IV. The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against them in accordance with law.

6. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

7. Identity, status and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 17.11.2023

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